

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ERIC WITHERSPOON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 04-1424-JJF
	:	
LOIS RUSSO , Superintendent/Warden,	:	
and M. JANE BRADY ,	:	
Attorney General for the State of Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, the respondents move for an extension of time in which to file an answer to the petition. In support thereof, the respondents state the following:

1. The petitioner, Eric Witherspoon, has applied for federal habeas relief challenging a March 1999 conviction for manslaughter, first degree reckless endangering, and two related weapons offenses. (D.I. 1); *see generally Witherspoon v. State*, 2001 WL 138499 (Del.). By the terms of the Court's order, the answer to the petition is due to be filed on or before March 21, 2005.

2. Due to case load and various other matters, undersigned counsel needs additional time to file and prepare an answer to the petition. Counsel was out of the office except to attend to certain specific matters for more than two weeks in February 2005 on paternity leave and returned on February 22, 2005. Upon return, counsel among other assignments had argument in the state supreme court on Wednesday March 2, 2005, filed a brief on March 8, 2005 in a habeas case pending on appeal in the Third Circuit, filed a

supplemental memorandum in the state supreme court and another supplemental memorandum in the Superior Court on March 14, 2005, and filed an answering brief in the state supreme court on March 17, 2005. Counsel is also scheduled to file three other answers on or before April 11, 2004 and, working with co-counsel, to file an answering brief in the state supreme court in a capital case pending on direct appeal. Because of this work load and absence from the office, counsel requires the additional time to prepare the answer in this case.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is the respondents first request for an extension of time in this case. The requested extension will not result in any prejudice to the petitioner.

5. In light of the above, the respondents submit that an extension of time of approximately one month to and including April 22, 2005 is reasonable.

/s/Thomas E. Brown

Thomas E. Brown
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar ID# 3278

Date: March 17, 2005

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FOR THE DISTRICT OF DELAWARE**

ERIC WITHERSPOON,	:	
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Petitioner,	:	
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v.	:	Civ. Act. No. 04-1424-JJF
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LOIS RUSSO , Superintendent/Warden,	:	
and M. JANE BRADY ,	:	
Attorney General for the State of Delaware,	:	
	:	
Respondents.	:	

ORDER

This _____ day of _____, 2005,

WHEREAS, respondents having requested an extension of time in which to file an answer to the petition for a writ of habeas corpus, and

WHEREAS, it appearing to the Court that the request is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before April 22, 2005.

United States District Judge

CERTIFICATE

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/S/Thomas E. Brown

Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: March 17, 2005

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of this Court, hereby certifies that on March 17, 2005 he caused to be mailed by first class U.S. Mail two copies of the attached document (Motion for Extension of Time) to the petitioner:

Eric Witherspoon (No. 888967)
Souza Baranowski Corr. Ctr.
Post Office Box 8000
Shirley, MA 01464.

/S/Thomas E. Brown
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: March 17, 2005